

AMENDED IN SENATE SEPTEMBER 2, 2009

AMENDED IN SENATE JUNE 29, 2009

AMENDED IN ASSEMBLY APRIL 29, 2009

AMENDED IN ASSEMBLY MARCH 31, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## ASSEMBLY BILL

**No. 179**

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**Introduced by Assembly Member Portantino**  
**(Principal coauthor: ~~Assembly Member Caballero~~)**  
**(Principal coauthor: ~~Senator Negrete McLeod~~)**

February 2, 2009

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~~An act relating to taxation.~~ *An act to amend Section 201.3 of the Labor Code, relating to employment, and declaring the urgency thereof, to take effect immediately.*

### LEGISLATIVE COUNSEL'S DIGEST

AB 179, as amended, Portantino. ~~Income and corporation taxes: report.~~ *Wages: temporary workers.*

*Existing law provides that for employees of temporary services employers, as defined, wages shall be paid weekly, or daily if an employee is assigned to a client, as defined, on a day-to-day basis or to a client engaged in a trade dispute. Existing law imposes civil and criminal penalties on an employer who violates certain wage payment requirements.*

*This bill would permit employees of temporary services employers who provide specified health care services to be paid semimonthly.*

*This bill would declare that it is to take effect immediately as an urgency statute.*

~~The Franchise Tax Board, among other things, administers the Personal Income Tax Law and the Corporation Tax Law.~~

~~This bill would require the board to report to the Legislature specified information relating to corporations, entities, or individuals receiving tax exemptions, deductions, credits, and credit carryovers, as provided.~~

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: ~~yes~~<sup>no</sup>. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 201.3 of the Labor Code is amended to*  
2     *read:*

3     201.3. (a) For purposes of this section, the following  
4     definitions apply:

5     (1) “Client” and “customer” mean the person with whom a  
6     temporary services employer has a contractual relationship to  
7     provide the services of one or more individuals employed by the  
8     temporary services employer.

9     (2) “Employing unit” has the same meaning as defined in  
10    Section 135 of the Unemployment Insurance Code.

11    ~~(1)~~

12    (3) “Temporary services employer” means an employing unit  
13    that contracts with clients or customers to supply workers to  
14    perform services for the clients or customers and that performs all  
15    of the following functions:

16    (A) Negotiates with clients and customers for matters such as  
17    the time and place where the services are to be provided, the type  
18    of work, the working conditions, and the quality and price of the  
19    services.

20    (B) Determines assignments or reassignments of workers, even  
21    if workers retain the right to refuse specific assignments.

22    (C) Retains the authority to assign or reassign a worker to  
23    another client or customer when the worker is determined  
24    unacceptable by a specific client or customer.

25    (D) Assigns or reassigns workers to perform services for clients  
26    or customers.

27    (E) Sets the rate of pay of workers, whether or not through  
28    negotiation.

29    (F) Pays workers from its own account or accounts.

30    (G) Retains the right to hire and terminate workers.

(2)

(4) “Temporary services employer” does not include any of the following:

(A) A bona fide nonprofit organization that provides temporary service employees to clients.

(B) A farm labor contractor, as defined in subdivision (b) of Section 1682.

(C) A garment manufacturing employer, which, for purposes of this section, has the same meaning as “contractor,” as defined in subdivision (d) of Section 2671.

~~(3) “Employing unit” has the same meaning as defined in Section 135 of the Unemployment Insurance Code.~~

~~(4) “Client” and “customer” means the person with whom a temporary services employer has a contractual relationship to provide the services of one or more individuals employed by the temporary services employer.~~

(b) (1) Except as provided in paragraphs (2) to (5), inclusive, if an employee of a temporary services employer is assigned to work for a client, that employee’s wages are due and payable no less frequently than weekly, regardless of when the assignment ends, and wages for work performed during any calendar week shall be due and payable not later than the regular payday of the following calendar week. A temporary services employer shall be deemed to have timely paid wages upon completion of an assignment if wages are paid in compliance with this subdivision.

(2) If an employee of a temporary services employer is assigned to work for a client on a day-to-day basis, that employee’s wages are due and payable at the end of each day, regardless of when the assignment ends, if each of the following occurs:

(A) The employee reports to or assembles at the office of the temporary services employer or other location.

(B) The employee is dispatched to a client’s worksite each day and returns to or reports to the office of the temporary services employer or other location upon completion of the assignment.

(C) The employee’s work is not executive, administrative, or professional, as defined in the wage orders of the Industrial Welfare Commission, and is not clerical.

(3) If an employee of a temporary services employer is assigned to work for a client engaged in a trade dispute, that employee’s

1 wages are due and payable at the end of each day, regardless of  
2 when the assignment ends.

3 (4) If an employee of a temporary services employer is assigned  
4 to work for a client and is discharged by the temporary services  
5 employer or leasing employer, wages are due and payable as  
6 provided in Section 201.

7 (5) If an employee of a temporary services employer is assigned  
8 to work for a client and quits his or her employment with the  
9 temporary services employer, wages are due and payable as  
10 provided in Section 202.

11 (6) If an employee of a temporary services employer is assigned  
12 to work for a client for over 90 consecutive calendar days, this  
13 section shall not apply unless the temporary services employer  
14 pays the employee weekly in compliance with paragraph (1) of  
15 subdivision (b).

16 (c) A temporary services employer who violates this section  
17 shall be subject to the civil penalties provided for in Section 203,  
18 and to any other penalties available at law.

19 (d) *A hospice employer, home health employer, or home care*  
20 *employer who provides services such as those described in*  
21 *subdivisions (b) and (c) of Section 12300 of the Welfare and*  
22 *Institutions Code shall be deemed to have timely paid wages upon*  
23 *completion of an assignment if wages are paid semimonthly.*

24 ~~(d)~~  
25 (e) Nothing in this section shall be interpreted to limit any rights  
26 or remedies otherwise available under state or federal law.

27 *SEC. 2. This act is an urgency statute necessary for the*  
28 *immediate preservation of the public peace, health, or safety within*  
29 *the meaning of Article IV of the Constitution and shall go into*  
30 *immediate effect. The facts constituting the necessity are:*

31 *In order to promote more efficient delivery of health care*  
32 *services and payments at the earliest possible time, it is necessary*  
33 *that this act take effect immediately.*

34 ~~SECTION 1. (a) The Franchise Tax Board shall report to the~~  
35 ~~Legislature the names of any corporation, entity, or individual that~~  
36 ~~receives any exemption, deduction, credit, credit adjustment, or~~  
37 ~~credit carryover under the Personal Income Tax Law or the~~  
38 ~~Corporation Tax Law, or both, that results in a reduction of tax~~  
39 ~~liability of one million dollars (\$1,000,000) or more. The report~~  
40 ~~shall include all of the following:~~

- 1     ~~(1) The name of the corporation, individual, or entity.~~
- 2     ~~(2) The specific exemption, deduction, credit, credit adjustment,~~
- 3     ~~or credit carryover that results in a one million dollar (\$1,000,000)~~
- 4     ~~or more reduction of tax liability.~~
- 5     ~~(3) The amount of reduction in tax liability for each category~~
- 6     ~~specified in paragraph (2).~~
- 7     ~~(b) The report shall be a public document and shall be made~~
- 8     ~~available by publication and on the Internet.~~

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